



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 120, 121, 135, and 136

Docket No. FAA-2012-0374

Living History Flight Experience (LHFE) – Exemptions for Passenger Carrying Operations Conducted for Compensation and Hire in Other Than Standard Category Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is announcing public meetings to gather additional technical input on the subject of exemptions relating to the LHFE. Input gathered will aid in developing future FAA guidance for evaluating LHFE petitions for exemption. Prior to the public meetings, the FAA is seeking public comment on the guidance.

DATES: The public meetings will be held on June 26, 27, and 28, 2012, from 8:00 a.m. until 4:30 p.m. Note that the meetings may be adjourned early if scheduled speakers complete their presentations early. The deadline to submit a request to make an oral statement is June 18, 2012. The written comment period will close on June 18, 2012.

ADDRESSES: The public meetings will be held in the FAA Headquarters building auditorium on the third floor, 800 Independence Ave., SW., Washington, D.C. 20591.

Due to limited space, attendees are required to please reply (RSVP) to 9-AFS-LHFE@faa.gov. Seating will be on a first-come-first-serve basis. If computer access is not possible, please RSVP via mail, fax or hand delivery via the methods listed directly below:

- Mail or Hand Delivery: RSVP to Flight Standards Service, General Aviation and Commercial Division, AFS-800, ATTN: LHFE (RSVP), 800 Independence Ave., SW., Washington, D.C. 20591
- Fax: RSVP to AFS-800, ATTN: LHFE (RSVP) at 202-385-9597.

Written comments (identified by docket number FAA-2012-0374) may be submitted using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the instructions for sending comments electronically.
- Mail: Send comments to Docket Operations, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, D.C. 20590.
- Fax: Fax comments to Docket Operations at 202-493-2251.
- Hand Delivery: Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, D.C., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Written comments to the docket will receive the same consideration as statements made at the public meeting. For more information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information provided by the commenter. Using the search function of the FAA's docket web site, anyone can find and read the comments received into any of the agency's dockets, including the name of

the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement may be reviewed in the Federal Register published on April 11, 2000 (65 FR 19477-19478) or at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time or in Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, D.C., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the public meetings and questions regarding the logistics of the meetings should be directed to Ms. Keira Jones, Office of Rulemaking (ARM-101), Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 267-4025, facsimile (202) 267-5075.

Technical questions should be directed to the General Aviation and Commercial Division, AFS-800, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 385-9600, facsimile (202) 385-9597; email 9-AFS-LHFE@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA has historically found an overwhelming public interest in preserving United States (U.S.) aviation history, including former military aircraft transferred to private individuals or organizations for the purpose of restoring and flying these aircraft. The FAA has further determined that, with appropriate conditions and

limitations imposed for public safety purposes, access to these aircraft can include allowing the public to experience flight. Because the regulations (14 CFR) do not otherwise allow such operations, the FAA established through its mid-1990s Living History Flight Experience (LHFE) policy that exemptions are an appropriate way to preserve aviation history and keep historic airplanes operational when comparable airplanes manufactured under a standard airworthiness certificate do not exist. The LHFE policy provided a way for the private owner/operators of historically significant, American-manufactured large, crew-served, piston-powered, multiengine, World War II bomber aircraft to conduct limited passenger carrying flights, for compensation, as a way to generate funds needed to maintain and preserve these historically significant aircraft for future generations.

Because this policy generated a number of petitions for exemption, the FAA affirmed that the regulatory scheme adopted in 14 CFR establishes appropriate safety standards for aircraft operators and crewmembers. Those requesting an exemption from a particular standard or set of standards must demonstrate that: (1) the flight cannot be performed in full compliance with regulations, (2) there is an overriding public interest in conducting passenger flights on the aircraft, and (3) the measures to be taken establish an appropriate level of safety for the flight. Because of this, the FAA limited the scope of its nostalgia flight exemption to World War II (WWII) or earlier vintage airplanes (i.e., manufactured before December 31, 1947). The reasoning behind this limitation addressed both public interest (e.g., the unique opportunity to experience flight in a B-17 or B-24 while such aircraft can still be safely maintained) and public safety (e.g., older and slower multiengine which airplanes allow time for appropriate corrective measures in

the event of an in-flight emergency, and crews must meet FAA qualification and training requirements). In addition, the FAA determined that it would not be prudent to grant exemptions from the FAA regulations to operators of supersonic jets because the speed of supersonic jets makes it likely that any in-flight emergency may result in serious injuries or fatalities. The recent crash of a supersonic jet at an air show that was piloted by two highly qualified and well-trained flight crewmembers clearly demonstrates the need to reevaluate LHFE.

However, even after defining the guidelines for approving LHFE exemptions, the number of petitions for exemptions outside this scope – e.g., for former military turbojet-powered aircraft such as the L-29, L-39, TS-11, Alfa Jet, and others that remain in active military service - led the FAA to issue further guidance in 2006 on Exemptions for Passenger-Carrying Operations Conducted for Compensation and Hire in Other Than Standard Category Aircraft (71 FR 15087). However, the FAA also noted that in expanding requests beyond the original intent, i.e., going from a passenger in a B-17 to manipulating the controls of a fighter jet to conducting simulated aerial combat fights in the interest of “the historical experience”, requires the agency to reevaluate its policy. The FAA noted that the clear market orientation of these requests undermines arguments of a public interest goal in preserving unique historical aircraft.

Nevertheless, the 2006 policy agreed to consider any request for exemption for passenger-carrying flights in non-standard category aircraft, especially former military turbine-engine-powered aircraft, on a case-by-case basis, including consideration of non-American manufactured aircraft. However, some petitioners are now creating business models (as indicated above) that, if authorized by the FAA, would offer civilians an

opportunity to conduct such aerial combat flights with hands-on flight experience in these aircraft. The FAA did not contemplate or intend operations of this nature when it originally developed the LHFE policy and, since issuance of the original policy and its subsequent revisions, additional issues (e.g., airworthiness and maintenance concerns) continue to emerge. Because of the high risks associated with the industry's expanded business model, the FAA has determined that a comprehensive evaluation of this policy is necessary and seeks public input.

Purpose of the Public Meetings

The purpose of the public meetings is for the FAA to hear the public's views and obtain information relevant to the policy under consideration. The FAA will consider comments made at the public meetings (as well as comments submitted to the docket) before making a final decision on issuance of the policy.

Persons wishing to attend this one-time meeting are required to register in advance. Your registration must detail whether you wish to make a statement during the public meeting. If you do wish to make a statement, your registration must indicate which of the following policy topics/questions you wish to speak about and what organization you represent. Due to limited space, attendees are required to reply (RSVP) to: 9-AFS-LHFE@faa.gov. If computer access is not possible, please RSVP via mail, fax or hand delivery via the methods listed above in the Addresses section.

In addition to the information sought during the public meeting, the FAA seeks information on the following questions. In order for the FAA to consider expansion of the policy, we must have sufficient data that provides an equivalent level of safety, address public interest, along with full background documentation. It is foreseen that

additional limitations will be required for any expansion to the LHFE policy due to some additions that have been requested (i.e., replica, turbojet and supersonic aircraft,) and not previous contemplated in the original LHFE policy. Again, the FAA requests that all comments be accompanied by full documentation.

General Policy

- a) If changes are made to the LHFE policy that excludes certain aircraft which are currently allowed in an exemption, how should the FAA possibly grandfather such operations?
- b) If LHFE is not limited to original factor built aircraft with operational history or if replica, reproduction, or look a like aircraft are to be considered under an expanded LHFE, what are the safety mitigations and limitations that should be considered and why.
- c) Should the operational history of the model be considered? Should the civil and public/military accident rate be considered when reviewing petitions for LHFE?
- d) Should the LHFE policy be limited to U.S. manufactured aircraft (as originally intended) with significant US aviation history? If the FAA is to expand the scope of LHFE, the following issues must be addressed:
 - i. The operational history of former U.S. military aircraft is accessible to the FAA while that of foreign aircraft may not be accessible.
 - ii. The FAA has little or no information on the “standard” to which the non-U.S. aircraft were built.
- e) Should the FAA exclude jets, turbojets and/ or supersonic aircraft? If not, the following issues must be addressed:

- i. High performance aircraft increase the level of complexity for the operation of these aircraft.
- ii. High performance aircraft add an increased level of complexity to the maintenance of these aircraft.
- iii. The FAA must consider the higher level of risk brought on by the higher energy aircraft and ejection seats. What are the industry standards for the FAA to evaluate on the inherent risks?
- iv. Should the FAA permit turboprop powered aircraft to hold LHFE status?
- f) Should the FAA permit single engine aircraft to hold LHFE status considering policy was originally developed based on the operation of large, multiengine, crew served aircraft?
- g) Should the FAA permit aircraft that were once operated by the military as single seat aircraft LHFE status if a second seat has been added? Does this configuration still meet the intent of LHFE?
- h) The original concept of the exemptions was to permit the public to experience something that could not be experienced in a “standard category” aircraft. With that in mind, should the FAA permit LHFE in aircraft for which a standard category aircraft is available and where comparable experience can be obtained.
- i) The original concept of the exemptions was to permit the public to experience something that could not be experienced in a “standard” aircraft. With that in mind, should the FAA permit LHFE in aircraft for which there is a standard version of the same? How do we phase out or grandfather those that were inadvertently included as LHFE?

- j) Should the FAA establish an Organizational Delegation Authority-like process where an authorized industry entity evaluates an organization's request (training, certification, airworthiness, etc.) and makes recommends to the FAA.

Issuance, General

- k) Older aircraft require a rather large commitment on the part of the operator.

Sometimes it may be more than the operator realizes. Should the FAA require a "fitness" standard that considers the following?
 - i. Can the operator operate the aircraft?
 - 1. How much experience is enough to demonstrate the operator has the ability to operate the specific type? Or should the FAA consider their ability to operate a similar aircraft?
 - ii. Can the operator maintain the aircraft?
 - 1. Have they satisfactorily maintained this or a similar aircraft?
- l) The FAA feels that an operator's compliance history should be considered. If the operator or its principals have a history of non-compliance, should the FAA deny the petition?
 - i. Should the FAA require a "violation free" time period? If so, how long should it be? What about non-aviation history (i.e. convicted felon)?
- m) In part 119 operations, a new operator or one proposing to conduct operations with a significantly different aircraft may be asked to conduct proving or validation flights/testing to demonstrate their ability to conduct the operations proposed.
 - i. How much proving or validation flights/testing should be required if the petitioner does not have experience with the specific aircraft?

- ii. How much proving or validation flight/testing should be required if the petitioner does not have experience with a similar aircraft?
- n) How can the FAA determine “Operational Control”? The exemptions are designed to permit not for profit organizations to support the continued operation of LHFE aircraft. Who owns the aircraft? Who operates the aircraft? Who is responsible for the operation of the aircraft? Who really benefits?
- o) Should the FAA require that LHFE holders carry insurance?

Issuance, Limitations

- p) Should passengers be permitted to occupy a crew seat/position considering the following current policy?
 - i. The current LHFE policy states: “No persons other than the assigned flight crew members may be permitted on the pilot station of the airplane during flight operations.”
 - ii. The FAA has always interpreted this statement as prohibiting the passengers from manipulating the controls of a single pilot aircraft but several LHFE holders have complained that the FAA misapplied the meaning as applied to single pilot aircraft.
- q) Formation flight is already prohibited by § 91.111(b) but the FAA feels that “air combat maneuvering” at any distance creates an unacceptable level of risk (formation is popularly defined as flight within 500 feet). Considering this, should such flights be prohibited or severely restricted to ensure the safety of the aircraft occupants and persons and property on the ground?

- r) Should the FAA prohibit or severely restrict aerobatics in LHFE aircraft considering the following?
 - i. Older aircraft, mitigation of risk requires that the aircraft be operated “gently”.
 - ii. Aerobatic training and rides are available in properly certificated aircraft.
 - iii. Pilot qualification. The FAA has no clear way to qualify or evaluate aerobatic qualifications. Is an ICAS ACE evaluation adequate?
 - iv. If the FAA permits aerobatics, are the current weather minimums adequate (1500 ft ceiling and three miles visibility) or are they too low?
 - v. Many of the aircraft manuals restrict aerobatics to much higher altitudes such as those listed in the P-47 aircraft.
- s) Should the FAA limit, restrict, or prohibit low passes while conducting LHFE flights?
- t) Should the FAA require approved seats for the pilots and passengers?
- u) What emergency equipment should the FAA require on LHFE aircraft?
- v) Should the FAA require operators to have evacuation plans and drills?
- w) If the FAA allows “high performance” jets, should the operator be required to have arresting gear?
 - i. If the FAA requires the availability of arresting gear, will the military approve?
- x) Considering the following, should the FAA include flight training requirements in the LHFE exemption?
 - i. Flight training is available via deviation for experimental aircraft.
 - ii. Flight training is available in limited aircraft via exemption.
- y) In addition to the LHFE exemption, should the FAA require the operator to obtain a 14 CFR 91 Sightseeing ride Letter of Authorization?

- z) In nearly every flight operation where passengers are carried for compensation or hire, pilots are required to participate in a drug and alcohol testing program. Should the FAA require drug and alcohol training and testing for LHFE operators?

Weather Minimums

aa) Weather minimums

- i. Should the weather minimums be raised for all LHFE flights or should the FAA require the pilot in command (PIC) of LHFE aircraft to be instrument rated and current?
- ii. Since §91.515 requires large aircraft to remain at least 1,000 feet above ground level, and the minimum distance below clouds in class C, D, and E airspace is 500 feet, is a 1500 foot ceiling appropriate or should the FAA require more appropriate weather minimums for these aircraft?
- iii. If the FAA allows passengers to manipulate the controls of the LHFE aircraft, what should be the minimum weather?
- iv. If the FAA allows aerobatic flight in LHFE aircraft, what should be the minimum weather?

Pilot Qualification/Currency

bb) Pilot qualification/experience minimums.

- i. Is an unrestricted pilot qualification required?

cc) Pilot and crew training requirements.

- i. Are the current LHFE training requirements adequate?

Maintenance/Inspection

- dd) Should the operator be required to demonstrate their ability to maintain the aircraft?

- ee) Are the current LHFE maintenance and inspection requirements adequate?
- i. An experimental airworthiness certificate assumes a higher level of risk is acceptable for the pilot. However, is the higher level of risk acceptable for a paying passenger or should the FAA change the conditions and limitations, or the operating limitations, to mitigate the risks? If so, what should such changes look like?
- ff) Should the FAA require that the interior and exterior entrances be marked as exit doors?
- i. Should the markings be in contrasting colors?
 - ii. Should the markings have a minimum legibility requirement such as 36 inches?
 - iii. Should the FAA require that the handles be marked in a contrasting color?
- gg) Should aircraft that have been modified by the addition of a second seat be required to provide a means for the passenger to exit the aircraft without the pilot exiting first?
- hh) Safety of the public is the FAA's primary goal. Since LHFE aircraft are all older aircraft, how should the FAA determine which aircraft to can be operated under LHFE? Some of the LHFE aircraft range from complete restorations (from the data plate up) to aircraft that have serious corrosion or other structural issues.
- i. How should the FAA identify which aircraft are eligible for LHFE status?
 - ii. How does the FAA or operator ensure an equal level of safety?
- ii) Should the FAA allow aircraft that previously held a standard certificate, but later "decertified" and now hold an experimental certificate, be allowed to operate under an LHFE exemption?

- i. Aircraft that no longer conform to their type certificate data sheet create an issue for the FAA since it can be difficult to determine an equal level of safety for a decertified aircraft. With this in mind, should such aircraft be allowed to operate under LHFE status?

Participation at the Public Meetings

Commenters who wish to present oral statements at the June 26, 27, and 28, 2012, public meetings should submit requests to the FAA no later than June 18, 2012.

Requests should be submitted as described in the “FOR FURTHER INFORMATION CONTACT” section of this document and should include a written summary of oral remarks to be presented and an estimate of time needed for the presentation. Preferably, please submit requests via email to: 9-AFS-LHFE@faa.gov. Requests received after the dates specified above will be scheduled if there is time available during the meetings; however, the speakers’ names may not appear on the written agendas. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested to ensure various views can be heard. See “Public Meeting Procedures” below.

The FAA may have available a projector and a computer capable of accommodating Word and PowerPoint presentations from a compact disk (CD) or USB memory device. Persons requiring any other kind of audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Public Meeting Procedures

A panel of representatives from the FAA and other government agencies will be present. An FAA representative will facilitate the meetings in accordance with the following procedures:

(1) The meetings are designed to facilitate the public comment process. The meetings will be informal and non-adversarial. No individual will be subject to cross-examination by any other participant. Government representatives on the panel may ask questions to clarify statements and to ensure an accurate record. Any statement made during the meetings by a panel member should not be construed as an official position of the government.

(2) There will be no admission fees or other charges to attend or to participate in the public meetings. The meetings will be open to all persons, subject to availability of space in the meeting room. The FAA will make every effort to accommodate all persons wishing to attend. The FAA asks that participants sign in between 7:30 and 8:00 a.m. on the days the meetings are being attended. The FAA will try to accommodate all speakers; however if available time does not allow this, speakers will be scheduled on a first-come-first-served basis. The FAA reserves the right to exclude some speakers, if necessary, to obtain balanced viewpoints. The meetings may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meetings.

(3) The FAA will prepare agendas of speakers and presenters and make the agendas available at the meetings.

(4) Speakers may be limited to 3-minute statements. If possible, the FAA will notify speakers if additional time is available.

(5) The FAA will review and consider all material presented by participants at the public meetings. Position papers or materials presenting views or information related to the draft policy may be accepted at the discretion of the presiding officer and will be subsequently placed in the public docket. The FAA requests that presenters at the meetings provide at least 10 copies of all materials for distribution to the panel members. Presenters may provide other copies to the audience at their discretion.

(6) Each person presenting comments is asked to submit data to support the comments. The FAA will protect from disclosure all proprietary data submitted in accordance with applicable laws.

Issued in Washington, D.C., on May 16, 2012.

John M. Allen
Director, Flight Standards Service

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